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Attorneys for Complainant

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-2003-5

GARY F. PADO
6382 Faustino Way
Sacramento, CA 95831

Certified Public Accountant
Certificate No. CPA 49829

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the
parties to the above-entitled proceeding that the following matters are true:

PARTIES

1. Complainant Carol Sigmann is the Executive Officer of the Board of
Accountancy. She brought this action solely in her official capacity and is represented in this
matter by Bill Lockyer, Attorney General of the State of California, by Jessica M. Amgwerd,
Deputy Attorney General.

2. On or about January 29, 1988, the California Board of Accountancy issued
CPA Certificate Number 49827 to respondent Gary F. Pado. Mr. Pado's CPA Certificate was in
full force and effect at all times relevant to the charges brought and is renewed through
January 31, 2003.

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JURISDICTION

3. Accusation No. AC-2003-5 is currently pending against Gary F. Pado ("Respondent"), said Accusation having been filed with the Board of Accountancy ("Board") on September 10, 2002. The Accusation was duly served on the Respondent on or about September 13, 2002, and Respondent filed a timely Notice of Defense. A copy of Accusation No. AC-2003-5 is attached as Exhibit A and is hereby incorporated by reference as if fully set forth.

ADVISEMENT AND WAIVERS

4. Respondent has carefully read the nature of the charges and allegations in the accusation and the effects of this Stipulated Settlement and Disciplinary Order.

5. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges contained in said Accusation, the right to be represented by counsel at his own expense, his right to confront and cross-examine witnesses against him, his right to present evidence and to testify on his own behalf, the right to the issuance of subpoenas to compel attendance of witnesses and the production of documents, the his right to reconsideration, appeal and any and all other rights which may be accorded him under the California Administrative Procedure Act and other applicable laws.

6. Respondent voluntarily, knowingly and intelligently waives and gives up each and every right set forth above.

ADMISSIONS, RESERVATIONS & CONTINGENCIES

7. Respondent understands that the charges and allegations in the Accusation, if proven at a hearing, constitute cause for imposing discipline upon his Certified Public Accountant license. Further Respondent stipulates that in any subsequent hearing before the Board, the Board may deem the aforesaid allegations to be true. Respondent agrees that his Certified Public Accountant license is subject to discipline and agrees to be bound by the Board's imposition of discipline as set forth in the Order below.

8. For the purposes of this proceeding only, Respondent admits his license is subject to discipline for violation of Business and Professions Code section 490, section

1 5100(a), and section 5100(c), as set forth in the Accusation. More specifically, Respondent
2 admits to the following:

- 3 a. A criminal action was filed against Respondent in the
4 Northern District of California, San Francisco Division,
5 entitled, *United States of America v. Gary Pado*, Case No.
6 CR02-0135-PJM. On May 15, 2002, Respondent pled
7 guilty to violating Title 18, U.S. Code §371 (conspiracy to
8 commit securities fraud), a felony. Respondent's wrongful
9 conduct (leading to his felony conviction), is substantially
10 related to the functions, practices and duties of a certified
11 public accountant.

12 9. The admissions made by Respondent herein are only for the purposes of
13 this proceeding, or any other proceedings in which the Board of Accountancy or other
14 professional licensing agency is involved, and shall not be admissible in any other criminal or
15 civil proceeding.

16 10. This stipulation shall be subject to the approval of the Board. Respondent
17 understands and agrees that Board of Accountancy's staff and counsel for Complainant may
18 communicate directly with the Board regarding this stipulation and settlement, without notice to
19 or participation by Respondent or his counsel. If the Board fails to adopt this stipulation as its
20 Order, except for this paragraph the Stipulated Settlement and Disciplinary Order shall be of no
21 force or effect, it shall be inadmissible in any legal action between the parties, and the Board
22 shall not be disqualified from further action by having considered this matter.

23 11. In consideration of Respondent's stipulation to license revocation, the
24 Board will not seek reimbursement of related and accrued investigation and prosecution costs in
25 this matter at this time. However, should respondent seek reinstatement of his certificate in the
26 future, he agrees that, prior the Board's consideration of his petition for reinstatement, he will
27 reimburse the Board ~~two thousand six hundred and four dollars (\$2,604.00)~~ ^{THREE THOUSAND EIGHT HUNDRED AND NINE DOLLARS AND TWELVE CENTS} for costs incurred in
28 this action. JMA 12-14-02 12/18/02 3,809.12

12. The parties agree that facsimile copies of this Stipulated Settlement and
Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as
the original Stipulated Settlement and Disciplinary Order and signatures.

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DISCIPLINARY ORDER

13. In consideration of the foregoing admissions and recitals, the parties stipulate and agree that the Board shall, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

IT IS HEREBY ORDERED that Certificate No. CPA 49829 issued to Gary F. Pado is revoked.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order, and understand the effect this stipulation will have on my Certified Public Accountant license. I enter into this Stipulated Settlement voluntarily, knowingly, and intelligently and agree to be bound by the Disciplinary Order and Decision of the Board of Accountancy. I further agree that a facsimile copy of this Stipulated Settlement and Disciplinary Order, including facsimile copies of signatures, may be used with the same force and effect as the originals.

DATED: 11/18/2002

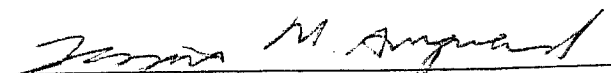

GARY F. PADO

Respondent (License CPA 49829)

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for the consideration by the Board of Accountancy of the Department of Consumer Affairs.

DATED: 11-26-02

BILL LOCKYER, Attorney General
of the State of California


JESSICA M. AMGWERD
Deputy Attorney General

Attorneys for Complainant

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**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2003-5

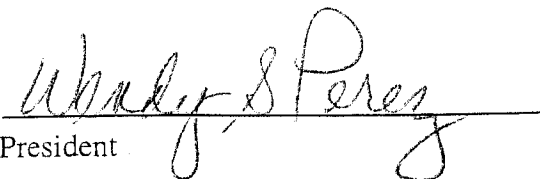
GARY F. PADO
6382 Faustino Way
Sacramento, CA 95831
Certified Public Accountant
Certificate No. CPA 49829

DECISION AND ORDER

Respondent

The foregoing Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy of the Department of Consumer Affairs, as its Decision in the above entitled matter. This Decision shall become effective on March 1, 2003.

It is so ORDERED on this 29 day of January, 2003.


President

For The California Board of Accountancy
California Department of Consumer Affairs

1 BILL LOCKYER, Attorney General
of the State of California
2 JESSICA M. AMGWERD, State Bar No. 155757
Deputy Attorney General
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8 BEFORE THE
9 CALIFORNIA BOARD OF ACCOUNTANCY
10 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. AC-2003-5

12 GARY F. PADO
6382 Faustino Way
13 Sacramento, CA 95831

ACCUSATION

14 Certified Public Accountant
Certificate No. CPA 49829

15 Respondent.
16

17 Complainant Carol B. Sigmann, as cause for disciplinary action, alleges:

18 1. Complainant is the Executive Officer of the California Board of
19 Accountancy ("Board") and makes and files this accusation solely in her official capacity.

20 I.

21 LICENSE INFORMATION

22 2. On or about January 29, 1988, the Board issued Certified Public
23 Accountant Certificate No. CPA 49829 to Gary F. Pado, ("Respondent"). The certificate will
24 expire on January 31, 2003, unless renewed.

25 3. This Accusation is brought before the California Board of Accountancy
26 ("Board") under the authority of the following sections of the Business and Professions Code.

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1 II.

2 STATUTES AND REGULATIONS

3 4. Business and Professions Code section 118(b), provides, in pertinent part,
4 that the expiration of a license shall not, during any period in which it may be renewed, restored,
5 reissued or reinstated, deprive the Board of authority to institute or continue a disciplinary
6 proceeding against the licensee or otherwise to take disciplinary action against the licensee.

7 5. Business and Professions Code section 5100 provides in pertinent part th
8 following:

9 After notice and hearing the board may revoke, suspend or refuse
10 to renew any permit or certificate granted under Article 4
(commencing with section 5070) and Article 5 (commencing with
11 section 5080), or may censure the holder of that permit or
certificate for unprofessional conduct which includes, but is not
12 limited to, one or any combination of the following causes:

13 (a) Conviction of any crime substantially related to the
qualifications, functions and duties of a certified public accountant
or public accountant.
14 . . .

15 (c) Dishonesty, fraud or gross negligence in the practice of public
16 accountancy or in the performance of the bookkeeping operations
described in Section 5052.

17 6. Business and Professions Code section 5107 provides for recovery by the
18 Board of all reasonable costs of investigation and prosecution of cases. This includes, but is not
19 limited to, attorneys' fees in actions establishing violations of Business and Professions Code
20 section 5100, subdivision (a) and (c). A certified copy of the actual costs, or a good faith
21 estimate of costs signed by the Executive Officer, constitute prima facie evidence of reasonable
22 costs of investigation and prosecution of the case.

23 7. Section 58 of Title 16, California Code of Regulations (Board Rule 58)
24 provides that licensees of the Board engaged in the practice of public accountancy shall comply
25 with all applicable professional standards, including but not limited to generally accepted
26 accounting principles and generally accepted auditing standards.

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8. Business and Professions Code section 490 provides as follows:

490. Conviction of a Crime

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

9. Under Business and Professions Code section 125.3, the Board may request the Administrative Law Judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

III.

GENERAL BACKGROUND

10. Unify Corporation ("Unify"), is a software company, headquartered in San Jose, with its main operations in Sacramento, California. Unify developed and sold database management software and internet software for e-commerce applications. Unify was a publicly traded company, and was required to comply with the regulations of the United States Securities and Exchange Commission, and ensure the company's financial information was accurately recorded and disclosed to the public.

11. Respondent was the Chief Financial Officer ("CFO") of Unify beginning November 1998, and became acting Chief Executive Officer in June 2000 until July 31, 2000. Gholamreza Mikaili ("Mikaili") was Unify's Chief Executive Officer from April 1995 until June 2000.

12. An action was filed by the Securities and Exchange Commission ("SEC"), entitled *Securities and Exchange Commission v. Reza Mikaili, Gary F. Pado and Unify*

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1 Corporation, against Unify, Respondent and Mikaili, Case No. C022326 RS, alleging violations
2 of the securities laws and making misrepresentations to outside auditors.

3 13. A criminal action was filed against Respondent in the Northern District of
4 California, San Francisco Division, entitled, *United States of America v. Gary Pado*, Case No.
5 CR02-0135-PJM. On May 15, 2002, Respondent pled guilty in Case No. CR02-0135-PJM to
6 violating Title 18, U.S. Code §371 (conspiracy to commit securities fraud), a felony.
7 Respondent's wrongful conduct (leading to his felony conviction), is substantially related to the
8 functions, practices and duties of a certified public accountant.

9 14. As the CFO of Unify, Respondent had a duty to: (a) make and keep
10 books, records and accounts that fairly and accurately reflected the company's business
11 transactions; (b) devise and maintain a system of internal accounting controls sufficient to
12 provide reasonable assurances that the company's transactions were recorded as necessary to
13 permit preparation of financial statements in conformity with Generally Accepted Accounting
14 Principles ("GAAP"); and (c) file with the SEC quarterly reports (on Form 10-Q) and annual
15 reports (on Form 10-K) which included reliable financial statements. The Forms 10-Q included
16 unaudited financial statements, and the Forms 10-K included audited financial statements.

17 15. In the plea agreement in Case No. CR02-0135-PJM, Respondent admitted
18 that from April 1999 through July 2000, he knowingly and willingly participated in the
19 conspiracy to overstate Unify's software sales and service revenues. Mikaili directed and
20 expected that Unify consistently report that it had met or exceeded projected quarterly results.
21 As a result of Respondent's illegal conduct, Unify had to restate its financial statements which
22 included debooking approximately \$18.4 million or 47% of its revenue for fiscal year 2000. In
23 order to accomplish these results, Respondent admittedly did the following illegal acts:

- 24 (a) Falsely and deliberately overstated quarterly software sales and service
25 revenues in violation of GAAP by: (i) recognizing revenue on contracts
26 that were conditioned on "side agreements" that permitted customers to
27 cancel; (ii) recognizing revenue from reciprocal transactions where Unify
28 purchased the same amount of product from a customer that the customer
was purchasing from Unify; (iii) recognizing revenue from funded
transactions in which Unify invested in a customer in order to provide the
funding needed by the customer to purchase Unify products; (iv)
recognizing revenue from funded transactions in which Unify provided

1 funding to a customer ostensibly to do software development work in
2 order to provide the customer with the funds necessary for it to buy Unify
3 products; and (v) recognizing revenue on purchase commitments Unify's
4 CEO knew were beyond the customers' ability to pay;

- 5 (b) Made and caused others to make fraudulent entries to company books and
6 records at quarter-end;
- 7 (c) Concealed the true nature of the improper revenue-generating transactions
8 from Deloitte and Touche, LLP ("Deloitte"), the independent auditor;
- 9 (d) Made false statements and/or material omissions to Deloitte;
- 10 (e) Filed materially false and misleading financial statements with the SEC;
11 and
- 12 (f) Made and allowed Unify's CEO to make materially false and misleading
13 public statements about Unify's financial performance.

14 IV.

15 VIOLATIONS

16 **B&P §490**

17 (Conviction of a Crime)

18 16. Complainant incorporates herein by reference each and every allegation
19 contained in paragraphs 10 through 15 above. Circa May 15, 2002, Respondent pled guilty to
20 Title 18, U.S. Code §371 (conspiracy to commit securities fraud). Respondent is subject to
21 disciplinary action pursuant to Business and Professions Code section 490 for conviction of a
22 crime, which is substantially related to the functions, practices and duties of a certified public
23 accountant.

24 **B&P §5100(a)**

25 (Conviction of a Crime)

26 17. Complainant incorporates herein by reference each and every allegation
27 contained in paragraphs 10 through 15 above. Respondent is subject to disciplinary action
28 pursuant to Business and Professions Code section 5100(a), for conviction of a crime, which is
substantially related to the functions, practices and duties of a certified public accountant.

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B&P §5100(c)
(Dishonesty/Fraud)

18. Complainant incorporates herein by reference each and every allegation contained in paragraphs 10 through 15 above. Respondent is subject to disciplinary action pursuant to Business and Professions Code section 5100(c), for dishonesty and/or fraud. Respondent's dishonesty and/or fraud include the conduct as alleged in paragraph 15, and the following:

- (a) Making materially false and misleading public statements on or about August 17, 1999, by causing Unify to issue a press release announcing the results for the fiscal 2000 first quarter ended July 31, 1999. The announcement was materially false in that, among other things, it reported that total revenues for this quarter were "\$8.7 million.
- (b) Making materially false and misleading statements on or about August 13, 1999, by signing a "management representation letter" to Deloitte in connection with its quarterly review of Unify financial statements. The letter included the following materially false representations:
 - i. "The financial information referred to above [for the quarter ended July 31, 1999] is fairly presented in conformity with generally accepted accounting principles..."
 - ii. "The company has made available to you (a) all financial records and related data that would have a bearing on the purpose of your review..."
 - iii. "No events have occurred subsequent to the date of the above-described financial information that would require adjustment to, or disclosure in, the information."
 - iv. "The Company has adopted Statement of Position 97-2 ("SOP 97-2"), Software Revenue Recognition." Management is aware of the issues identified in SOP 97-2 and the revenue recognition policies of the Company comply with SOP 97-2. We have made available to you all applicable contractual information regarding our revenue recognition under SOP 97-2. Additionally, we have not entered into any informal side agreements, including modifications, or verbal arrangements related to the contractual information noted above."

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V.

PRAYER

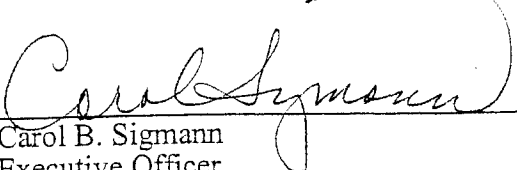
WHEREFORE, Complainant requests that the Board hold a hearing on the matters alleged herein, and that following said hearing, the Board issue a decision:

1. Revoking, suspending, or otherwise imposing discipline on Certified Public Accountant Certificate Number No. CPA 49829 heretofore issued to Respondent Gary F. Pado;

2. Ordering Respondent Gary F. Pado to pay the Board its costs in investigating and enforcing the case according to proof at the hearing and pursuant to Business and Professions Code section 125.3 and/or section 5107; and

3. Taking such other and further action as the Board deems proper.

DATED: 9/10/02


Carol B. Sigmann
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California

Complainant

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